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June 23, 2010

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**Re: Comments on Delta Stewardship Council's Proposed Consistency
Regulations and First Draft Interim Plan**

Dear Chairman Isenberg and Council Members:

The Sacramento Regional County Sanitation District ("SRCSD" or "District") has reviewed the agenda materials for the Delta Stewardship Council's ("DSC" or Council's") meeting of June 24-25, 2010. SRCSD requests the Council's consideration of the following comments regarding specific agenda items or issues.

Board of Directors
Representing:

County of Sacramento

County of Yolo

City of Citrus Heights

City of Elk Grove

City of Folsom

City of Rancho Cordova

City of Sacramento

City of West Sacramento

Proposed "Consistency" Regulations

Item 8 concerns the June 14, 2010, "discussion draft" of Administrative Procedures Governing Appeals of: State or Local Agency Certifications of Consistency with the Delta Plan; and Determination by the Department of Fish and Game Related to the Bay-Delta Conservation Plan. The item indicates that the regulations would be brought "back to the Council in July for formal adoption".

Initially, and particularly in light of the fundamental legal and policy questions raised by the proposed regulations, we believe it is imprudent to rush the adoption of regulations that will not be relevant for some time. It is very unlikely that many affected state or local agencies, or the concerned public, are aware of the scope of the proposed regulations or their impact on governmental authority.

Quite simply, the issue posed by the regulations is whether the Commission has veto power over all "covered actions" approved by a state or local agency. We believe this would be a usurpation of local authority, and not consistent with law. While the Council's authorizing legislation expresses intent that land use actions be consistent with the Delta Plan, it does not appoint the Commission as the ultimate adjudicator of whether these or other state and local actions can proceed at all. It is unnecessary to opine or speculate as to what actions may be "covered actions," but the proposed regulations go too far in the regulation of any such action.

Mary K. Snyder
District Engineer

Stan R. Dean
Director of Policy and Planning

Prabhakar Somavarapu
Director of Operations

Marcia Maurer
Chief Financial Officer

Claudia Goss
Director of Communications

Water Code section 85225.10(a) allows persons who claim that a proposed covered action is inconsistent with the Delta plan to appeal to the Council a state or local agency's certification of consistency. Under Water Code section 85225.25, the Council, if it concludes the certification is not supported by substantial evidence, may remand the matter "for reconsideration of the covered action[.]"

Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council. (Wat. Code, § 85225.25.)

The statute stops there. It does not provide for still-further and potentially interminable appeals, and does not ultimately require local agencies to conform their actions to the dictates of the Council. The proposed regulations, however, would allow for appeals of the revised certification of consistency¹, nullifying the state or local agency's right to "determine whether to proceed with the covered action." This is improper.

The Commission should modify paragraph 12 of the regulation by deleting ", 30 days has elapsed and no person has appealed the revised certification." It should also modify paragraph 2 for consistency. It should also afford local agencies adequate time to consider the proposed regulation, as there is no urgency. Finally, paragraph 4 of the proposed regulation twice uses the word "It" in contexts in which the reference is unclear.

Interim Plan

The Council's agenda item 15 is discussion of the Interim Plan, and Attachment 1 to this item is labeled "First Draft Interim Plan." SRCSD has both general and specific concerns with the "First Draft."

Much of the content of the Draft Plan is deferred to a second draft. This, coupled with other difficulties, renders it very difficult to provide comment. Moreover, at the previous Council meeting, staff was directed to establish working groups to gather additional information and a range of viewpoints on particular issues related to both the interim and final Delta Plans. SRCSD has requested to participate in relevant working groups, but has yet to be contacted.

¹ 12. No covered action which is the subject of an appeal shall be implemented unless one of the following conditions has been met:

- a) The Council has denied the appeal;
- b) The public agency has pursuant to Water Code section 85225.5 decided to proceed with the action as proposed or modified and has filed with the Council a revised certification of consistency addressing each of the findings made by the Council, *30 days has elapsed and no person has appealed the revised certification*; or
- c) The Council or its Executive Officer has dismissed the appeal for one or both of the following reasons:


The First Draft also appears to mingle Interim Plan and Delta Plan concepts. We recommend the Interim Plan focus on facilitation of measures that will be accomplished in the very near future.

Finally, the Interim Plan relies heavily on the Delta Vision Strategic Plan. While the Delta Vision Strategic Plan should be considered, it does not govern either the Interim Plan or the Delta Plan.

In closing, SRCSD recognizes the challenges facing the Council and the need for timely action. However, SRCSD has significant concerns with the "rush" to adopt regulations that will govern state and local agency consistency determinations. We also have concerns with the aggressive schedule to develop both the Interim and Final Delta Plans that could have far reaching impacts not only for local governments and related infrastructure, but for the State as a whole. We appreciate that there are statutory mandates that must be adhered to, however, there must also be a transparent and robust stakeholder process to ensure an effective Delta Plan is developed. SRCSD will be submitting additional comments on these and other issues in the coming weeks.

If you have any questions, please contact me at 916-876-6092.

Sincerely,

A handwritten signature in black ink, reading "Terrie L. Mitchell". The signature is fluid and cursive, with the first name "Terrie" and last name "Mitchell" clearly legible.

Terrie L. Mitchell
Manager, Legislative and Regulatory Affairs

cc: Joe Grindstaff, Acting Executive Officer, Delta Stewardship Council
Stan R. Dean, District Engineer

